



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2014-0790; FRL -9918-76-Region 10]

Approval and Promulgation of Air Quality Implementation Plans; Washington;

Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency.

ACTION: Final rule; administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the Washington State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the Washington State Department of Ecology (Ecology) and approved by the EPA. In this action, the EPA is also notifying the public of a correction to a typographical error the IBR tables. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, D.C., and the EPA Regional Office.

DATES: This action is effective [**insert date of publication in the Federal Register**].

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 10, Office of Air, Waste, and Toxics (AWT-150), 1200 Sixth Avenue, Seattle, WA 98101; the Air and Radiation Docket and Information Center, Environmental Protection Agency, 1301 Constitution Avenue NW, Room Number 3334, EPA West Building, Washington, DC 20460; or the National Archives and Records Administration (NARA). For information on the availability of this material

at NARA, call (202) 741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, EPA Region 10, (206) 553-0256, hunt.jeff@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The SIP is a living document which a state revises as necessary to address its unique air pollution problems. Therefore, the EPA from time to time, must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, the EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between the EPA and the Office of the Federal Register (OFR) (62 FR 27968). The description of the revised SIP document, IBR procedures and “Identification of plan” format are discussed in further detail in the May 22, 1997 **Federal Register** document. On March 20, 2013, the EPA published a **Federal Register** beginning the new IBR procedure for Washington (78 FR 17108).

Since the publication of the last IBR update, the EPA approved into the Washington SIP the regulatory changes listed below. The EPA also reorganized the content and order of the tables contained in 40 CFR 52.2470 paragraph (c) “*EPA approved regulations*” in order to acknowledge the EPA’s approval of Washington Administrative Code (WAC) 173-400-020 which divides implementation of portions of the Washington SIP on a jurisdictional basis, with a corresponding effect on the air program agencies listed in Tables 4 through 10. This division of the Washington SIP on a jurisdictional basis is described in more detail in a final rulemaking published October 3, 2014 (79 FR 59653).

A. Added Regulations

TABLE 1 – REGULATIONS APPROVED STATEWIDE

- Washington Administrative Code, Chapter 173-433 – Solid Fuel Burning Device Standards, sections 173-433-140 (Criteria for Impaired Air Quality Burn Bans) and 173-433-155 (Criteria for Prohibiting the Use of Solid Fuel Burning Devices that Are Not Certified). For more information see 79 FR 26628 (May 9, 2014).
- Washington Administrative Code, Chapter 173-476 – Ambient Air Quality Standards, sections 173-476-010 (Purpose), 173-476-020 (Applicability), 173-476-030 (Definitions), 173-476-100 (Ambient Air Quality Standard for PM-10), 173-476-110 (Ambient Air Quality Standards for PM-2.5), 173-476-120 (Ambient Air Quality Standard for Lead (Pb)), 173-476-130 (Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide)), 173-476-140 (Ambient Air Quality Standards for Nitrogen Oxides (Nitrogen Dioxide)), 173-476-150 (Ambient Air Quality Standard for Ozone), 173-476-160 (Ambient Air Quality Standards for Carbon Monoxide), 173-476-170 (Monitor Siting Criteria), 173-476-180 (Reference Conditions), and 173-476-900 (Table of Standards). For more information see 79 FR 12077 (March 4, 2014).

TABLE 2 – ADDITIONAL REGULATIONS APPROVED FOR WASHINGTON

DEPARTMENT OF ECOLOGY (ECOLOGY) DIRECT JURISDICTION

- Washington Administrative Code, Chapter 173-400 – General Regulations for Air Pollution Sources, sections 173-400-036 (Relocation of Portable Sources), 173-400-111 (Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources), 173-400-118 (Designation of Class I, II, and III Areas), 173-400-175

(Public Information), and 173-400-560 (General Order of Approval). For more information see 79 FR 59653 (October 3, 2014).

TABLE 6 – ADDITIONAL REGULATIONS APPROVED FOR THE OLYMPIC REGION
CLEAN AIR AGENCY (ORCAA) JURISDICTION

- Rule 6.2 Outdoor Burning, sections 6.2.3 (No Residential or Land Clearing Burning), 6.2.6 (Curtailed), and 6.2.7 (Recreational Burning). For more information see 78 FR 61188 (October 3, 2013).
- Rule 8.1 Wood Heating, sections 8.1.1 (Definitions), 8.1.2 (b) and (c) (General Emission Standards), 8.1.3 (Prohibited Fuel Types), 8.1.4 (Curtailed), 8.1.5 (Exceptions), 8.1.7 (Sale and Installation of Uncertified Woodstoves), and 8.1.8 (Disposal of Uncertified Woodstoves). For more information see 78 FR 61188 (October 3, 2013).

TABLE 7 – ADDITIONAL REGULATIONS APPROVED FOR THE PUGET SOUND CLEAN
AIR AGENCY (PSCAA) JURISDICTION

- Regulation I - Article 13: Solid Fuel Burning Device Standards, section 13.06 (Emission Performance Standards). For more information see 78 FR 32131 (May 29, 2013).

B. Revised Regulations

TABLE 1 – REGULATIONS APPROVED STATEWIDE

- Washington Administrative Code, Chapter 173-433 – Solid Fuel Burning Device Standards, sections 173-433-010 (Purpose), 173-433-030 (Definitions), 173-433-100 (Emission Performance Standards), 173-433-110 (Opacity Standards), 173-433-120 (Prohibited Fuel Types), and 173-433-150 (Restrictions on Operation of Solid Fuel Burning Devices). For more information see 79 FR 26628 (May 9, 2014).

TABLE 2 – ADDITIONAL REGULATIONS APPROVED FOR WASHINGTON

DEPARTMENT OF ECOLOGY (ECOLOGY) DIRECT JURISDICTION

- Washington Administrative Code, Chapter 173-400 – General Regulations for Air Pollution Sources, sections 173-400-020 (Applicability), 173-400-030 (Definitions), 173-400-040 (General Standards for Maximum Emissions), 173-400-050 (Emission Standards for Combustion and Incineration Units), 173-400-060 (Emission Standards for General Process Units), 173-400-070 (Emission Standards for Certain Source Categories), 173-400-081 (Startup and Shutdown), 173-400-091 (Voluntary Limits on Emissions), 173-400-105 (Records, Monitoring, and Reporting), 173-400-110 (New Source Review (NSR) for Sources and Portable Sources), 173-400-112 (Requirements for New Sources in Nonattainment Areas -- Review for Compliance with Regulations), 173-400-113 (New Sources in Attainment or Unclassifiable Areas -- Review for Compliance with Regulations), 173-400-151 (Retrofit Requirements for Visibility Protection), 173-400-171 (Opportunity for Public Comment), and 173-400-200 (Creditable Stack Height and Dispersion Techniques). For more information see 79 FR 59653 (October 3, 2014).

TABLE 7 – ADDITIONAL REGULATIONS APPROVED FOR THE PUGET SOUND CLEAN AIR AGENCY (PSCAA) JURISDICTION

- Regulation I – Article 12: Standards of Performance for Continuous Emission Monitoring Systems, section 12.03 (Continuous Emission Monitoring Systems). For more information see 78 FR 57073 (September 17, 2013).
- Regulation I - Article 13: Solid Fuel Burning Device Standards, sections 13.01 (Policy and Purpose), 13.02 (Definitions), 13.03 (Opacity Standards), 13.04 (Allowed and Prohibited

Fuel Types), 13.05 (Restrictions on Operation of Solid Fuel Burning Devices), and 13.07 (Prohibitions on Wood Stoves that are not Certified Wood Stoves). For more information see 78 FR 32131 (May 29, 2013).

- Regulation II - Article 1: Purpose, Policy, Short Title, and Definitions, section 1.05 (Special Definitions). For more information see 78 FR 57073 (September 17, 2013).
- Regulation II—Article 3: Miscellaneous Volatile Organic Compound Emission Standards, section 3.04 (Motor Vehicle and Mobile Equipment Coating Operations). For more information see 78 FR 57073 (September 17, 2013).

C. Removed Regulations

TABLE 1 – REGULATIONS APPROVED STATEWIDE

- Washington Administrative Code, Chapter 173-433 – Solid Fuel Burning Device Standards, section 173-433-170 (Retail Sales Fee). For more information see 79 FR 26628 (May 9, 2014).
- Washington Administrative Code, Chapter 173-470 – Ambient Air Quality Standards for Particulate Matter, sections 173-470-010 (Purpose), 173-470-020 (Applicability), 173-470-030 (Definitions), 173-470-100 (Ambient Air Quality Standards), and 173-470-160 (Reporting of Data). For more information see 79 FR 12077 (March 4, 2014).

TABLE 2 – ADDITIONAL REGULATIONS APPROVED FOR WASHINGTON
DEPARTMENT OF ECOLOGY (ECOLOGY) DIRECT JURISDICTION

- Washington Administrative Code, Chapter 173-400 – General Regulations for Air Pollution Sources, section 173-400-100 (Registration). For more information see 79 FR 59653 (October 3, 2014).

TABLE 7 – ADDITIONAL REGULATIONS APPROVED FOR THE PUGET SOUND CLEAN AIR AGENCY (PSCAA) JURISDICTION

- Regulation II – Article 3: Miscellaneous Volatile Organic Compound Emission Standards, section 3.11 (Coatings and Ink Manufacturing). For more information see 78 FR 57073 (September 17, 2013).

D. Approved, but not Incorporated by Reference Regulations

As described in the proposed approval for the Thurston County second 10-year coarse particulate matter (PM₁₀) limited maintenance plan, the EPA reviews and approves state submissions to ensure they provide adequate enforcement authority (78 FR 47259, August 5, 2013). However, regulations describing agency enforcement authority are not incorporated into the SIP to avoid potential conflict with the EPA's independent authorities. The EPA originally erred in incorporating WAC 173-433-200, “Regulatory Actions and Penalties” by reference into the SIP. In the final approval of the Thurston County Second 10-year PM₁₀ Limited Maintenance Plan the EPA corrected this error by moving WAC 173-433-200 from 40 CFR 52.2470(c) *EPA approved regulations* to 40 CFR 52.2470(e) *EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures* (78 FR 61188, October 3, 2013).

E. Source-Specific Requirements

The EPA modified 40 CFR 52.2470(d) to include the following source-specific requirements: BP Cherry Point Refinery (Administrative Order No. 7836), Alcoa Intalco Works (Administrative Order No. 7837, Revision 1), Tesoro Refining and Marketing Company (Administrative Order 7838), Port Townsend Paper Corporation (Administrative Order No. 7839, Revision 1), Lafarge North America, Inc. Seattle, Wa. (Administrative Revised Order No. 7841),

and Weyerhaeuser Corporation, Longview, Wa. (Administrative Order No. 7840). For more information see 79 FR 33438 (June 11, 2014).

II. EPA Action

In this action, the EPA is announcing the update to the IBR material as of October 7, 2014. The EPA is also correcting a typographical error in paragraph 52.2470(c). In “TABLE 2—ADDITIONAL REGULATIONS APPROVED FOR WASHINGTON DEPARTMENT OF ECOLOGY (ECOLOGY) DIRECT JURISDICTION” the EPA is correcting the entry for WAC 173-400-050 to add 173-400-050(2) as an exception in the “Explanations” column.

The EPA has determined that today’s rule falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today’s rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are “impractical, unnecessary, or contrary to the public interest.” Public comment is “unnecessary” and “contrary to the public interest” since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state

choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- does not provide the EPA with the discretionary authority to address, as appropriate,

disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law. Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

The EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking

actions for each individual component of the Washington SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, the EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this “Identification of plan” update action for Washington.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 22, 2014.

Dennis J. McLerran,
Regional Administrator,
Region 10.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart WW - Washington

2. Section 52.2470 is amended by:

a. Revising paragraph (b);

b. Revising paragraph (c), entry 173-400-050 in TABLE 2 – ADDITIONAL REGULATIONS APPROVED FOR WASHINGTON DEPARTMENT OF ECOLOGY (ECOLOGY) DIRECT JURISDICTION.

The revised text read as follows:

§52.2470 Identification of plan.

* * * * *

(b) Incorporation by reference.

(1) Material listed as incorporated by reference in paragraphs (c) and (d) of this section with an EPA approved date of October 7, 2014 was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The material incorporated is as it exists on the date of the approval, and notice of any change in the material will be published in the Federal Register. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after October 7, 2014 will be incorporated by reference in the next update to the SIP compilation.

(2)(i) EPA Region 10 certifies that the rules and regulations provided by the EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially

promulgated State rules and regulations which have been approved as part of the State Implementation Plan as of October 7, 2014.

(ii) EPA Region 10 certifies that the following source-specific requirements provided by the EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State source-specific requirements which have been approved as part of the State Implementation Plan as of October 7, 2014.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region 10 Office at 1200 Sixth Ave, Seattle, WA 98101. For further information, call (206) 553-0256; the EPA Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301 Constitution Avenue NW, Washington, DC 20460. For further information, call (202) 566-1742; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(c) * * *

TABLE 2 – ADDITIONAL REGULATIONS APPROVED FOR WASHINGTON DEPARTMENT OF ECOLOGY (ECOLGY) DIRECT JURISDICTION

(Applicable in Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, San Juan, Stevens, Walla Walla, and Whitman counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction. These regulations also apply statewide for facilities subject to the applicability sections of WAC 173-405-012, WAC 173-410-012, and WAC 173-415-012).

State citation	Title/subject	State effective date	EPA approval date	Explanations
Washington Administrative Code, Chapter 173-400 -- General Regulations for Air Pollution Sources				

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173-400-050	Emission Standards for Combustion and Incineration Units.	12/29/12	10/3/14, 79 FR 59653	Except: 173-400-050(2); 173-400-050(4); 173-400-050(5).
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